

IMPROVING READER SERVICES THROUGH THE NEW COPYRIGHT AND NEIGHBORING RIGHTS ACT, 1999

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Abstract

This paper examines recent developments in Tanzania's copyright law as it pertains to university, public and research libraries in Tanzania. The first part of the paper revisits the basics of copyright law focusing on materials, which are subject to copyright, authors' exclusive rights and infringement of copyright laws. Part two looks at recent developments in legislation regarding university, public and research libraries by examining provisions of the law on fair use and the library's right to reproduce copyrighted materials. A better understanding of copyright law is likely to enable academic libraries to plan in advance and possibly influence future copyright law. This paper identifies opportunities and strategies that university libraries may pursue under existing copyright law to minimize law suits resulting from copyright infringement.

Introduction

Basics of Copyrights

Libraries are homes to numerous published and unpublished materials, which stir copyright concerns. The role of librarians and information professionals is to support and meet information needs of users and ensure access to copyrighted materials while at the same time respecting copyrights of owners to ensure they obtain fair economic returns on their intellectual property. Despite this, librarians are not expected to act as police of intellectual property. On the contrary they are expected to encourage their users to adhere to copyright laws. This is a dilemma for librarians as they are likely to face daily questions about protecting the rights of copyright owners and providing optimal library resources to their users. Finally, the paper discusses opportunities and strategies that librarians and in particular university librarians can pursue under the existing copyright law of Tanzania to encourage maximum exploitation of library resources at the same time minimizing law suits for copyright infringement.

According to Skone- James (1971:3) copyright is the right to control copying or reproduction by others of some kinds of developed materials in concrete form or tangible expression. Copyright creates a balance between legitimate interests of creators who wish to be rewarded for reproduction of their works, and users who wish to have access to these works. Thus, the primary purpose of copyright

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legislation is to foster creation and dissemination of intellectual works for public welfare. Mere ideas, unless expressed in a manner that can be shared all over the world, are not covered or protected by copyright. In Tanzania copyright is protected and regulated by the Copyright and Neighbouring rights Act of 1999. Section 4 of the Act, defines copyright to mean the sole legal right to print, publish, perform film or record a literary, artistic or musical work. The Copyright Act, 1999 is quite a recent legislation which repeals the Copyright Act of 1966.

Materials Subject to Copyright

In general materials covered under copyright include books, music recordings, films, art, sculpture and photographs. Currently protection extends to computer programs although in some countries legislative response in this regard is lacking or significantly delayed. As far as Tanzania is concerned, Section 5 of the 1999 Copyright Act, enumerates categories of literary and artistic works whose authors enjoy copyright protection to include:-

- Books, pamphlets, and other writings including computer programmes
- Lectures, addresses, sermons and other works of the same nature
- Musical works
- Cinematographic works and other audio - visual works and
- Illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

A work only qualifies for protection under copyright law if the author is a national of Tanzania or a habitual resident or if the work was first published in Tanzania, irrespective of the nationality or residence of the author. Equally, works published in a foreign country, which grant similar protection to residents or nationals of Tanzania is covered under Tanzania's copyright law. This protection extends to unpublished works of authors of foreign nationality where their country of habitual residence grants similar protection to nationals or residents of Tanzania. Unpublished works in this regard include research and technical reports, pre-prints, committee reports, working papers, conference papers, dissertations, thesis and government reports. These normally contain comprehensive, concrete and up to date information on research findings.

Economic Rights of Copyright Owners

The Concept of Copyright seeks to vest exclusive rights to authors to carry out or to authorize a number of acts in relation to their work. As provided for under Section 9 of the 1999 Copyright Act, such acts include reproduction, distribution, broadcasting, public performance and exhibition, translation, adaptation and broadcasting of the work including importation of copies of the work, rental of the original or copy of an audio-visual work, a computer program, a data base or

a musical work in the form of notation irrespective of the ownership of the original or copy concerned and other communication to the public of the work

Infringement of Copyrighted Works

Any person, who copies, reproduces broadcasts et.cetera protected works without permission from the owner is considered to have infringed the copyright law unless there is statutory exceptions which permit a user to use protected work without the author's consent or upon payment of remuneration accordingly. The 1999 Copyright Act does not explicitly define the term infringement but does outline situations and instances in which copyright is deemed to have been infringed upon. According to Skone-James (1971:172) infringement may be direct which consists of unauthorized exercise by persons who are not owners of protected rights; or indirect when unauthorized dealings with works which are themselves direct infringements or unauthorized importation.

Civic and Criminal Liabilities

The 1999 Copyright Act, clearly states civil and criminal liabilities for any person who infringes upon protected works without permission of the owner. In this regard, an author whose rights have been infringed may institute legal action for injunction and damages against a person for infringement to prevent infringement or continuation of infringement and for payment of damages suffered respectively. The basic aim is to restore the author to the position s/he would have been at had there been no infringement (Jones 1999: 213). Nevertheless, the author has a right under section 36 (1) of the 1999 Copyright Act, to require destruction of all equipment that were used in infringement and copies that were unlawfully reproduced. It is important to note that the action for infringement will only apply if the work was fixed in tangible form and not mere ideas.

Libraries And Copyright Protection

The Need for Control and Monitoring

The role of librarians and informational professionals is to support and meet information needs of their users. Although library staff cannot be expected to act as copyright police or guardians of intellectual property rights, they are required to ensure that users do not infringe copyright laws and to encourage respect for works under their custody whilst facilitating access to their resources both print and non-print. In addition, it is their responsibility to promote respect for copyright law and to actively defend copyrighted works against unfair use and unauthorized exploitation. In their daily routine, librarians may find themselves copying copyrighted materials on behalf of their users, for other libraries and sometimes for replacement in permanent library collections. Sometimes complete copies of books are photocopied by library users or by librarians for library use. This is attributed to a number of factors, including low photocopying charges,

such that the cost of making a complete copy of the original work is very cheap. Sometimes there is no control or monitoring from the library staff on what is photocopied in their premises. A shortage of books in shops is a factor (Chisenga, 1998).

Libraries and Copyright Infringement

Library activities must be carried out in accordance with the copyright law to avoid prosecution for infringement. As such, library staff must be educated about copyright law from the point of view of both information intermediaries and users. Limited and lack of knowledge on the issues of copyright may lead to catastrophe and sometimes proliferation of law suits and ultimately closure of a library. However, knowledge of copyright law is one thing and preventing infringement is another. Librarians may be perceived to encourage copyright infringement if they do not prevent photocopying of whole books by their users. Infringement which occurs in the course of photocopying could in law involve the library and library staff who were directly involved in copying. It is, in this regard, that Section 40 of the 1999 Copyright Act, authorizes an injured party (i.e. a copyright owner) not only to institute court proceedings against an employee directly responsible for the infringement but also against the employees institution. Such proceedings may lead to destruction of the employer's equipment, which was used to infringe the copyright, or to have the equipment rendered unusable. It may also lead to destruction of copies that were unlawfully reproduced.

Application of Existing Exceptions for Library Uses

Under the terms of the Berne convention, the main international copyright convention, signatory nations may grant certain exceptions to the exclusive rights of authors, within limitations. Each signatory nation is allowed to authorize reproduction of copyrighted works in certain special cases provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. In Tanzania, the main exceptions are covered by a general right to copy called free use which envisages the doctrine of fair use (otherwise called fair dealing), and copying by librarians and archivists (otherwise called library reproduction rights). These exceptions can be employed by libraries and librarians to meet the needs of their users and access to copyrighted works whilst respecting the law.

Fair Use Doctrine

This is a complex doctrine associated with copyright law which allows certain type of copying without permission in areas where it is felt that important social principles would be violated or otherwise. The doctrine in its purest form "lets film critics include a clip from a film in view to illustrate a point" The purpose is to ensure copyright law does not stifle criticism. Of significance is the fact that

the doctrine can in many cases be used by a parent accused of infringement should the case be taken to court. It is however important to point out that the doctrine only covers specific purposes namely; research and private study, criticism or review. It is erroneous to think the doctrine is a wholesale license to copy as long as you do not charge or if for educational purposes. The doctrine has never been accorded an explicit statutory definition due to the vast range of copyright materials and modes of use (Jones, 1996; 199, Wall, 1993:75). In many countries, the doctrine has proved complex and a source of confusion because what may be fair depends on each case. This drawback is exacerbated by emergence of new technologies where little case law is available. For instance, one factor in fair use analysis is the amount copied, but any software cannot be used unless copied in full.

In Tanzania, Section 12 of the 1999 Copyright Act outlines various circumstances under which uses of a protected work either in original or translated form is permissible without authors' consent and the obligation to pay remuneration for the uses of the work. The first is production, translation, adaptation arrangement or other, transformation of protected work exclusively for the user's own personal and private use. Second is inclusion of a quotation from a protect work into another work. Third, utilization of copyrighted materials in publications, broadcasts and programs distributed by cables or visual recordings for teaching purposes in schools, universities and other educational institutions.

The exemption is however not absolute as one must comply with inherent requirements to qualify for the same: For instance reproduction, under certain circumstances, must be for inter alia the users own personal and private use and should not conflict with fair practices and normal exploitation of the work. However, neither of the phrases "users own personal and "private use fair" practice and normal exploitation of the work are clearly defined in the 1999 Copyright Act".

The exceptions can apply to libraries/librarians that photocopy on behalf of users who seek to use a limited amount of copyrighted material for personal and private use. It does also cover copying services which a library may provide in response to local or inter library loan requests from individuals but not interlibrary copying for stock requirement of another library. The exception however does not cover copying for replacement in permanent library or archival collections. It is difficult to ascertain the quantity reproduced for personal and private use, in terms of what is fair can only be decided by the court in specific circumstances. It is however generally acceptable, that fair use application should not unfairly deprive owners of copyright a reasonable financial return. This provision therefore does not directly apply to library and library staff because they provide access of copyrighted works to their users and the facilities they render for copying.

Library Reproduction Rights

This is another source of user right, incorporated in copyright laws and is solely limited to libraries. Its essence is copying of materials by libraries pursuant to relatively specific standards. Unlike the fair use doctrine, it does not depend on analysis and interpretation for every application though its scope varies from country to country. Some common activities allowed under library reproduction rights include copying for replacing published or unpublished materials in permanent collections of libraries or archive or in permanent collections of another library or archive. Section 12 (7) of the Copyright Act 1999 permits reproduction of literary and artistic works lawfully made available to the public.

In this respect reproduction entails, making of one or more copies of a work in any manner or form including sound, visual recording or any permanent or temporary storage of the work in electronic form. The application of this statutory right is however limited to public libraries, noncommercial documentation centres, scientific institutions and educational establishments. More importantly, the reproduction should not be for commercial purposes. Therefore, the number of copies reproduced and their use is limited to regular activities of the institutions reproducing the work and the same should not conflict with the "normal exploitation of the work" or unreasonably prejudice the legitimate interests of the author.

The Copyright Act, 1999, however, does not provide for what is regarded as "normal exploitation of the work". Another requirement under this right is that reproduction of copyrighted works is limited to published and not unpublished works. Published works under the Act means a work which has been made available to the public in reasonable quantity for sale, rental, public lending or for either transfer of ownership or the possession of the copies (Sections 4 and 12 (7) of the Copyright act, 1999). This right may be used by libraries to procure replacement of lost works, availability of works which are out of print and those which have been mutilated or rendered unusable through constant use by library users. This right was non-existent in the repealed Copyright Act of 1966.

Reproduction Rights in the US and UK

A comparable example of stipulated in the rights provision is that of the USA where copyright law provisions permit copying of materials by libraries pursuant to relatively specific standards. Such provisions have since proved to have practical meaning for most libraries, as they do not require substantial external guidance or elaborate interpretations. The basic principles and activities include:

- Permits reproductions of published works for replacing damaged, deteriorated, lost, or stolen copy, but only if an unused replacement cannot be obtained at a fair price.
- Permits reproductions of unpublished works for preservation or security or for deposit at another library

- Permits reproductions of articles or contributions to collections or small parts of larger works for a patron's private study scholarship or research.
- Permits reproductions of entire works for a patron's private study scholarship or research, if a copy cannot be obtained at a fair price.
- Exempts libraries and their employees from liability for copying made by patrons on unsupervised machines where appropriate notices are posted.

However, such provisions do not apply to every activity in every library but only to libraries that are open to the public, or at least open to researchers. In this regard, most public and university libraries meet the criteria. These provisions apply only if reproduction or distribution is made without any purpose of direct or indirect commercial advantage. Unlike the position in Tanzania, this right in the US does not apply to musical works pictorial graphics, sculpture works or a motion picture or other audiovisual work except those dealing with news. Such provisions are over and above fair use provision which as far as the US is concerned, does not provide exact perimeters as in most cases but depends on the circumstance of each case. However, in the case of the USA, the fair use provision allows for copying of multiple copies for classroom use subject to:

Purpose of the use including non-profit educational purpose

Nature of copyright work

Amount of the copying and

Effect of the copying on the potential market

The UK's position with regard to copyright law on library reproduction right is more or less similar to that of the US. The law authorizes nonprofit based libraries to provide copying service in response to local or interlibrary loan requests from individuals, subject to a signing a form by the requester that a copy of the same has not been supplied by other libraries and that the material is for purposes of research or private study only. Nevertheless, librarians may make copies of items in order to replace them in permanent collections of their libraries or archives on condition that:

- The item is held on the permanent collection for reference only, or is held in the permanent collection and is available for loan only to other libraries for reference purpose.
- It is not reasonably practical for the item to be purchased (e.g. an out of print item).
- If the copy is for another library then the other library must declare in a written statement that the copy has been lost destroyed or damaged, that it is not reasonably practical to purchase a replace and that the copy will be for reference only.

- The librarian charges for the copy to recover the costs of production together with a contribution towards the general expenses of the library.

Libraries, Digital Information Source, and Copyrights

New developments in information and communication technologies have speeded up production, processing, storage, dissemination and distribution of information in new digital formats electronically. In Tanzania a good number of university libraries are computerised and have Internet facilities to improve delivery of quality service. Despite this it is doubtful if libraries and librarians are aware of copyright law and its impact on digital information and the extent to which existing copyright laws provide opportunities for free flow of digital information. The Copyright Act, 1999 unlike the repealed Copyright Act 1966 to some extent covers and protects digital information sources (Mnyele, 1996).

Computer programs which are defined under section 4 of the Copyright Act, 1999 as "a set of instruction expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result"; is enumerated and protected under the 1999 Copyright Act. The inclusion of computer programs is the closest there is to the protection of digital information sources (Chisenga, 1998). Computer programs are also covered under copyright laws covering libraries to reproduce copyrighted materials for library requirements. This implies that when making digital copies of copyrighted works and storing them temporarily in the library as electronic document delivery services is not infringing any copyrights users (Chisenga, 1998). But, such programs cannot, by virtue of section 12 (2) of the Act, be freely copied for individual personal and private use.

Libraries and Non Protected Works

Copyright law provides for the duration within which a work enjoys protection under the 1999 Copyright Act, the author's exclusive rights run for fifty (50) years from the end of the year in which the author died. In case of joint authorship, the exclusive rights extend up to fifty (50) years after the death of the last surviving author. Audio-visual works and works produced anonymously enjoy protection for fifty (50) years from the date such works were produced. Such works if identified and found to be still useful, may be freely reproduced and made available for library users. However, such works ought to be handled with care since old as they are; they might be obsolete for want of substantial revision but might be still useful for historical purposes.

Libraries and License to Use Copyrighted Works

License is another means under section 17 of the Copyright Act, 1999 by which on application by a library the author may grant in writing a license to the

applicant to carry out certain specific acts covered by the author's economic rights which includes reproduction, translation and importation of copies of the work and such other communication to the public of the work. In such a situation the scope of the license would only cover rights specifically mentioned in the licensing agreement. Licensing is a means through which the copyright owner may give permission for use of her/his work which exceeds fair use or the library's right to reproduce. It is however, characterized by recurrent problems primarily involving difficulties in identifying locating, and contracting copyright owners on the one hand, and inability to obtain response or timely response or on the other hand in terms of unreasonable prices or terms. Despite these difficulties licensing remains a useful avenue through which libraries may obtain works in high demand by users which are not easily obtained in bookshops or are out of print. It also a means through which libraries may provide electronic-based information services to library users.

Conclusion and Recommendations

In order to improve access to information and in relation to the 1999 Copyright Act, it is recommended that:-

- Librarians should not regard copyright as a prohibitive tool directing the range of activities allowed at the institutions, rather should treated it as an opportunity, The librarians' task is to identify maximum opportunities under the law to ensure they meet information needs of library users.
- Libraries and universities should be in the forefront in shaping copyright issues as they emerge. For instance confusions surrounding application of fair use rights depend on individual each case. Hence there is a need to adopt explicit general criteria in determining guidelines on what is fair and what is not fair use within which libraries can produce copyrighted materials for the purpose of improving access to information without fear of being sued or prosecuted.
- There is a need to review the 1999 copyright law so that libraries can reproduce both published and unpublished works, which admittedly contain comprehensive and sometimes up to date information. This is crucial because at sometimes it is difficult to tell which is published or not published.
- Currently, copyright Law awareness is directed toward musicians, music producers and artists and not Librarians. In view of this, there is a need to educate Librarians and users on the basics of copyright Law in order to create awareness and understanding of what is involved.

REFERENCES

- Chesenga, J. (1998). "Copyright Laws, Digital Information and Libraries in Sub-Saharan Africa: Namibian Experience" Paper presented at the 13th Standing conference of Eastern Central and Southern African Librarians held in Nairobi, Kenya, 27th - 31st July
- Cornish, G.P (1990). **Copyright: Interpreting the Law for Libraries and Archives**. Library Association Ltd., London
- Cornish, W.R. (1981). **Intellectual Property: Patents, Copyright, Trade Marks and Allied Right** London Sweet & Maxwell.
- Jones, H. (1996). **Publishing Law** London Routledge
- Mnyele, G. (1996). "Copyright protection of Computer Programmes in Tanzania a Plea for Legislative Intervention" J.F.M. Vol. 4, No. 2 Journal of Finance Management January, 1996.
- Owen, L. (1997). **Selling rights** London Routledge
- Page, G. et al (1997). **Journal Publishing**, Cambridge: Cambridge University Press.
- Skone James, E.P. (1971). **London Copinger and Skone James on copyright 11th ed**, Sweet and Maxwell.
- Samzugi, A.S. and Shaaban (2001). "Implications of Copyright Protection to Distance education in Tanzania: An Appraisal of the Copyright and Neighbouring Rights Act 1999" Huria Journal, Vol. 3 No. 2 September
- United Republic of Tanzania (1996) The Copyright Act, 1966. No. 61 of 1966.
- United Republic of Tanzania (1999). The Copyright and Neighbouring rights Act. 1999. No. 7 of 1999.
- United States of America (1999). Statement of Marybeth Peter, Registrar of Copyrights Before the Committee on the Judiciary United States 106th Congress, 1st session May 25
- Wall, R.A. (1993) **Copyright Made Easier** London Aslib.
- Whitcomb. A and P. Beckwith (1992). **Illustrated Information Technology Dictionary**, Stanley Thomas, Ltd., England.
- Wills. B. (ed) (1994) **Distance Education Strategies and Tools**. Education on Technology Publications. U.S.A. 1994.